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12 *Counsel for Plaintiff and the putative class*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ROSEMARY HOUSE, individually and on
16 behalf of all others similarly situated,

Case No. **'13CV0685 L BLM**

17 *Plaintiff,*

CLASS ACTION COMPLAINT

18 *v.*

19 NCO FINANCIAL SYSTEMS, INC., a
Pennsylvania corporation,

20 *Defendant.*

CLASS ACTION COMPLAINT AND JURY DEMAND

2 Plaintiff Rosemary House brings this class action complaint against Defendant NCO
3 Financial Systems, Inc., to stop Defendant's practice of making unsolicited telephone calls to the
4 cellular telephones of consumers nationwide, and to obtain redress for all persons injured by its
5 conduct. Plaintiff, for her class action complaint, alleges as follows upon personal knowledge as to
6 herself and her own acts and experiences, and, as to all other matters, upon information and belief,
7 including investigation conducted by her attorneys.

NATURE OF THE ACTION

9 1. Defendant NCO Financial Systems, Inc. is debt collector.

10 2. Defendant repeatedly made unsolicited telephone calls to Plaintiff's and the other

11 putative Class member's cellular telephones in violation of the Telephone Consumer Protection

12 Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

13 3. Neither Plaintiff Rosemary House, nor the other members of the proposed Class,

14 ever provided the cellular telephone numbers on which they received calls to Defendant for any

15 purpose related to a debt, nor did they provide consent to have Defendant make telephone calls to

16 those telephone numbers.

17 4. By making the telephone calls at issue in this Complaint, Defendant caused

18 Plaintiff and the members of the Class actual harm, including the aggravation and nuisance that

19 necessarily accompanies the receipt of unsolicited and harassing telephone calls, and the monies

20 paid to their wireless carriers for the receipt of such telephone calls.

21 5. The TCPA was enacted to protect consumers from unsolicited phone calls exactly

22 like those alleged in this case. In response to Defendant's unlawful conduct, Plaintiff filed the

23 instant lawsuit and seeks an injunction requiring Defendant to cease all unsolicited telephone

24 calling activities and an award of statutory damages to the members of the Class under the TCPA,

25 together with costs and reasonable attorneys' fees.

PARTIES

27 6. Plaintiff Rosemary House is a natural person and citizen of the State of California.
28 7. Defendant NCO Financial Systems, Inc. is a corporation organized and existing

1 under the laws of the State of Pennsylvania with its principal place of business located at 507
2 Prudential Road, Horsham, Pennsylvania 19044. NCO Financial Systems does business
3 throughout the United States, the State of California and in this District.

4 **JURISDICTION AND VENUE**

5 8. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331,
6 as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, which
7 is a federal statute.

8 9. The Court has personal jurisdiction over Defendant and venue is proper in this
9 District because Defendant transacts significant amounts of business within this District including
10 making telephone calls to consumers located in this District and collecting payments from
11 consumers living in this District.

12 **COMMON FACTUAL ALLEGATIONS**

13 10. Defendant placed and continues to place repeated and harassing phone calls to
14 consumers who allegedly owe a debt held by Defendant, or held by a third party on whose behalf
15 Defendant is acting, and who never provided the number called to Defendant for any purpose
16 related to an outstanding debt or any transaction underlying a debt. Instead, Defendant acquires
17 phone numbers through various means such as “skip tracing” or “number trapping.”

18 11. Defendant has placed calls for the purpose of alleged debt collection to thousands
19 of consumers in the past four years.

20 12. For example, starting in 2008, Plaintiff received hundreds of phone calls from
21 Defendant on her cellular telephone seeking to collect a debt. The calls continued through late
22 2012, and only ceased when Plaintiff changed her cellular telephone number.

23 13. The \$49.95 debt Defendant repeatedly called to collect was allegedly for a trial
24 membership that Plaintiff supposedly signed up for over the phone; however, Plaintiff did not sign
25 up for any such membership. When Plaintiff requested that Defendant substantiate the debt,
26 Defendant could not provide an answer. Plaintiff further informed Defendant that it was calling
27 her cellular telephone.

28 14. Plaintiff requested, on numerous occasions, that Defendant stop placing calls to her

1 cellular telephone. Yet, following such requests, Defendant continued to call over and over again.

2 15. Defendant placed calls to Plaintiff from at least the following numbers: (800) 227-
3 4000 and (866) 429-3592.

4 16. Plaintiff never provided her telephone number to Defendant, never consented to
5 receive telephone calls from Defendant at that number, and did not provide that telephone number
6 to any third party related to Defendant or related to the alleged debt Defendant sought to collect.

7 17. The calls Plaintiff received were made using equipment that had the capacity to
8 store or produce telephone numbers to be called using a random or sequential number generator,
9 and to dial such numbers. Additionally, Defendant's calls utilized interactive voice recognition
10 technology, also known as a predictive dialer. This technology, on information and belief, dials
11 several numbers simultaneously and connects the call to only those who answer first.

12 18. Plaintiff never consented to, requested, or otherwise desired or permitted Defendant
13 to make telephone calls to her cellular telephone number, nor did Plaintiff provide Defendant with
14 her cellular telephone number in any capacity.

15 19. Defendant was and is aware that the above described telephone calls were and are
16 being made to consumers without those consumers' prior express consent.

17 CLASS ALLEGATIONS

18 20. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and
19 23(b)(3) on behalf of herself and a class (the "Class") defined as follows:

20 Any person in the United States to whom Defendant (1) placed a call in connection
21 with the collection of a debt; (2) to a cellular telephone number; (3) on which the
individual called never consented to receive telephone calls from Defendant.

22 21. **Numerosity:** The exact number of Class members is unknown and not available to
23 Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and
24 belief, Defendant has made telephone calls to thousands of consumers who fall into the definition
25 of the Class. Class members can be identified through Defendant's records.

26 22. **Typicality:** Plaintiff's claims are typical of the claims of other members of the
27 Class, in that Plaintiff and the Class members sustained damages arising out of Defendant's
28 uniform wrongful conduct and unsolicited telephone calls.

1 23. **Adequate Representation:** Plaintiff will fairly and adequately represent and
2 protect the interests of the Class, and has retained counsel competent and experienced in complex
3 class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no
4 defenses unique to Plaintiff.

5 24. **Commonality and Predominance:** There are many questions of law and fact
6 common to the claims of Plaintiff and the Class, and those questions predominate over any
7 questions that may affect individual members of the Class. Common questions for the Class
8 include, but are not necessarily limited to the following:

9 (a) whether Defendant's conduct constitutes a violation of the TCPA;

10 (b) whether the equipment Defendant used to make the telephone calls in

11 question was an automatic telephone dialing system as contemplated by the

12 TCPA;

13 (c) whether Defendant systematically made telephone calls to persons who did

14 not previously provide Defendant with their prior express consent to receive

15 such telephone calls; and

16 (d) whether Class members are entitled to treble damages based on the

17 willfulness of Defendant's conduct.

18 25. **Superiority:** This case is also appropriate for class certification because class
19 proceedings are superior to all other available methods for the fair and efficient adjudication of
20 this controversy because joinder of all parties is impracticable. The damages suffered by the
21 individual members of the Class will likely be relatively small, especially given the burden and
22 expense of individual prosecution of the complex litigation necessitated by Defendant’s actions.
23 Thus, it would be virtually impossible for the individual members of the Class to obtain effective
24 relief from Defendant’s misconduct. Even if members of the Class could sustain such individual
25 litigation, it would still not be preferable to a class action, because individual litigation would
26 increase the delay and expense to all parties due to the complex legal and factual controversies
27 presented in this Complaint. By contrast, a class action presents far fewer management difficulties
28 and provides the benefits of single adjudication, economy of scale, and comprehensive supervision

1 by a single Court. Economies of time, effort and expense will be fostered and uniformity of
2 decisions ensured.

3 **COUNT I**
4 **Violation of the TCPA, 47 U.S.C. § 227**
5 **(On behalf of Plaintiff and the Class)**

6 26. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
herein.

7 27. Defendant made unsolicited telephone calls to cellular telephone numbers
8 belonging to Plaintiff and the other members of the Class without their prior express consent to
9 receive such calls.

10 28. Defendant made the telephone calls using equipment that had the capacity to store
11 or produce telephone numbers to be called using a random or sequential number generator, and to
12 dial such numbers.

13 29. Defendant utilized equipment that made the telephone calls to Plaintiff and other
14 members of the Class simultaneously and without human intervention.

15 30. By making the unsolicited telephone calls to Plaintiff and the Class's cellular
16 telephones without prior express consent, and by utilizing an automatic telephone dialing system,
17 Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii).

18 31. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Class
19 suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on
20 their cellular phones and under section 227(b)(3)(B) are each entitled to, *inter alia*, a minimum of
21 \$500.00 in damages for each such violation of the TCPA.

22 32. Should the Court determine that Defendant's conduct was willful and knowing, the
23 Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable
24 by Plaintiff and the other members of the Class.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff Rosemary House, individually and on behalf of the Class, prays
27 for the following relief:

28 1. An order certifying the Class as defined above, appointing Plaintiff Rosemary

1 House as the representative of the Class, and appointing her counsel as Class Counsel;

2 2. An award of actual and statutory damages;

3 3. An injunction requiring Defendant to cease all unsolicited telephone calling

4 activities, and otherwise protecting the interests of the Class;

5 4. An award of reasonable attorneys' fees and costs; and

6 5. Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: March 21, 2013

By: /s/ Sean P. Reis
One of her Attorneys

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